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6 UNITED STATES DISTRICT COURT  
7 WESTERN DISTRICT OF WASHINGTON  
8 AT TACOMA

9 AMANDA M. HAWLEY, et al.,

10 Plaintiffs,

11 v.

12 BUSINESS COMPUTER TRAINING  
INSTITUTE, INC., et al.,

13 Defendants.

CASE NO. C08-5055BHS

ORDER GRANTING  
DEFENDANTS' MOTION TO  
COMPEL RESPONSES TO  
WRITTEN DISCOVERY AND  
FOR SANCTIONS AND  
DENYING PLAINTIFFS'  
MOTION TO COMPEL  
DEFENDANT BCTI'S  
PRODUCTION OF  
DOCUMENTS AND ANSWERS  
TO INTERROGATORIES

16 This matter comes before the Court on Defendants' Motion to Compel Responses  
17 to Written Discovery and For Sanctions (Dkt. 58) and Plaintiffs' Motion to Compel  
18 Defendant BCTI's Production of Documents and Answers to Interrogatories (Dkt. 60).  
19 The Court has considered the pleadings filed in support of and in opposition to the  
20 motions and the remainder of the file and hereby grants Defendants' motion and denies  
21 Plaintiffs' motion for the reasons stated herein.

22 **I. FACTUAL AND PROCEDURAL BACKGROUND**

23 This matter was removed to federal court on January 30, 2008. Dkt. 1. Plaintiffs  
24 bring this suit on behalf of former Oregon students of the Business Computer Training  
25 Institute, Inc. ("BCTI"), alleging that BCTI made material misrepresentations that its  
26 training programs would train students to become business professionals and prepare  
27 them for high-paying jobs in high-tech computer careers; for officer administration  
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1 positions using computers; or for positions as web designers, network administrators,  
2 hardware repair technicians and software help-desk specialists with the intent of inducing  
3 Plaintiffs to enroll in the programs. Dkt. 1 at 10. Plaintiffs contend that BCTI conferred  
4 certificates on students regardless of their academic performance and enrolled students in  
5 order to acquire governmental funding. *Id.* at 11-12. According to Plaintiffs, BCTI did  
6 not fulfill its representations with regard to career counseling, reasonable job placement  
7 assistance, or referrals from BCTI. *Id.* at 13.

8 In Plaintiffs' Amended Complaint, they allege the following claims: (1) breach of  
9 contract and warranty, (2) violation of Washington's Consumer Protection Act, RCW  
10 19.86.020, (3) negligent infliction of emotional distress, (4) negligence and lack of  
11 institutional control, (5) misrepresentation, (6) breach of fiduciary duty, and (7) fraud.  
12 Dkt. 40.

13 On June 24, 2008, the Court issued a scheduling order requiring that all discovery  
14 must be completed by June 8, 2009. Dkt. 46.

15 On September 23, 2008, Defendants filed a Motion to Compel Responses to  
16 Written Discovery and For Sanctions. Dkt. 58. On October 6, 2008, Plaintiffs responded.  
17 Dkt. 72. On October 10, 2008, Defendants replied. Dkt. 80.

18 On September 25, 2008, Plaintiffs filed a Motion to Compel Defendant BCTI's  
19 Production of Documents and Answers to Interrogatories. Dkt. 60. On October 6, 2008,  
20 Defendants responded. Dkt. 70. On October 10, 2008, Plaintiffs replied. Dkt. 84.

## 21 **II. DISCUSSION**

22 Federal Rule of Civil Procedure 26 governs discovery and provides, in part, as  
23 follows:

24 Parties may obtain discovery regarding any nonprivileged matter that  
25 is relevant to any party's claim or defense--including the existence,  
26 description, nature, custody, condition, and location of any documents or  
27 other tangible things and the identity and location of persons who know of  
28 any discoverable matter. For good cause, the court may order discovery of  
any matter relevant to the subject matter involved in the action. Relevant  
information need not be admissible at the trial if the discovery appears

1 reasonably calculated to lead to the discovery of admissible evidence. All  
2 discovery is subject to the limitations imposed by Rule 26(b)(2)(C).

3 Fed. R. Civ. P. 26(b)(1). The following procedures apply to the production of documents  
4 or electronically stored information:

5 (i) A party must produce documents as they are kept in the usual  
6 course of business or must organize and label them to correspond to the  
7 categories in the request;

8 (ii) If a request does not specify a form for producing electronically  
9 stored information, a party must produce it in a form or forms in which it is  
10 ordinarily maintained or in a reasonably usable form or forms; and

11 (iii) A party need not produce the same electronically stored  
12 information in more than one form.

13 Fed. R. Civ. P. 34(b)(2)(E). On notice to other parties and all affected persons, a party  
14 may move for an order compelling disclosure or discovery. Fed. R. Civ. P. 37(a)(1).

#### 15 **A. Defendants' Motion to Compel**

16 Defendants move the Court "for an Order to Compel Plaintiffs to submit the  
17 required responses to three separate sets of written discovery requests served by  
18 Defendants nearly three months ago." Dkt. 58. Defendants claim that on May 30, 2008,  
19 they "served upon Plaintiffs three separate sets of written discovery containing requests  
20 for production and interrogatories." Dkt. 59, Decl. of Thomas R. Merrick, ¶ 1.

21 Defendants also claim that on June 6, 2008, they served six more sets of discovery  
22 requests upon Plaintiffs. *Id.*, Exhs. B & C. Plaintiffs concede that they have not  
23 responded to eight of the nine sets of discovery. Plaintiffs, however, claim that their  
24 tardiness is due to an "unexpected personal emergency" and time preparing for a  
25 cancelled mediation in this matter. Dkt. 72 at 2-3. While this may be some cause for  
26 delay, Plaintiffs still must comply with their discovery obligations. Therefore,  
27 Defendants' motion to compel is granted and Plaintiffs are compelled to answer  
28 Defendants' outstanding discovery requests no later than November 21, 2008.

If the court grants a motion to compel, then "the court must, after giving an  
opportunity to be heard, require the party or deponent whose conduct necessitated the  
motion, the party or attorney advising that conduct, or both to pay the movant's

1 reasonable expenses incurred in making the motion, including attorney’s fees.” Fed. R.  
2 Civ. P. 37(a)(5)(A). The court, however, “must not order this payment if . . . the  
3 opposing party’s nondisclosure, response, or objection was substantially justified.” *Id.*  
4 Therefore, Plaintiffs are ordered to show cause, if any they have, why the Court should  
5 not order them to pay Defendants’ reasonable expenses in bringing this motion.

#### 6 **B. Plaintiffs’ Motion to Compel**

7 Plaintiffs request an order compelling Defendants to produce documents and  
8 supplement certain interrogatories. Dkt. 60 at 1. Plaintiffs claim that they served  
9 Defendants with discovery requests on May 7, 2008. Dkt. 61, Declaration of Darrell L.  
10 Cochran, Exh. 1. On June 6, 2008, Defendants responded. *Id.* Exh. 2. Plaintiffs argue  
11 that Defendants’ responses are “wholly inadequate” and that Defendants’ objections are  
12 “unfounded and choreographed to avoid providing a substantive response to Plaintiffs’  
13 request.” Dkt. 60 at 3. On the other hand, Defendants argue that Plaintiffs have failed to  
14 make a good faith effort to meet and confer regarding this discovery dispute. Dkt. 70 at 5  
15 (citing Local Rule CR 37(a)(2)(A)). The Court agrees. The record shows that Plaintiffs  
16 filed their motion to compel two days after they informed Defendants of the alleged  
17 deficiencies. *See* Dkt. 71, Declaration of Thomas Merrick, Exh. G & I. The record does  
18 not show that the parties conferred either in person or over the telephone regarding the  
19 alleged deficiencies. Therefore, the Court denies without prejudice Plaintiffs’ motion to  
20 compel.

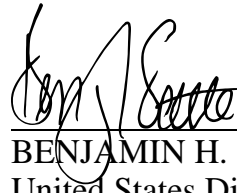
### 21 **III. ORDER**

22 It is hereby

23 **ORDERED** that Defendants’ Motion to Compel Responses to Written Discovery  
24 and For Sanctions (Dkt. 58) is **GRANTED** and Plaintiffs’ Motion to Compel Defendant  
25 BCTI’s Production of Documents and Answers to Interrogatories (Dkt. 60) is **DENIED**  
26 **without prejudice**. Plaintiffs may show cause, if any they have, why the Court should  
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1 not order them to pay Defendants' reasonable expenses for bringing their motion to  
2 compel no later than November 21, 2008.

3 DATED this 12th day of November, 2008.

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7 BENJAMIN H. SETTLE  
8 United States District Judge  
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